

IN THE COURT OF THE DISTRICT MUNSIF, SULUR.

Present : **Tmt.N.Renuga**, B.A., B.L.,
District Munsif, Sulur
Thursday, the 19th day of October 2023

I.A.No.4/2023
in
O.S.No.67/2023

1. M/s.R.S.Sales Corporation
through its partner Smt.Savithri Devi Kedia

2. Smt.Savithri Devi Kedia, Partner

3. Smt.Seema Kedia, Partner

4. Smt.Sangita Kedia, Partner

The Plaintiffs 1 to 4 represented through
Their power agent Mr.Dhanraj Keida

...Petitioners/ Plaintiffs

/ Vs /

1. Mrs.Kokila

2. Mr.N.Vijayakumar

3. Mrs.Sasikala Devi

4. Mrs.Swathi

5. Mr.D.Praveenkumar

6. Mrs.K.Natarajan @ Palaniappan

...Respondents / Defendants

This petition is coming on 05.09.2023 for final hearing before me in the presence of Thiru.Udaya P.S.Menon and Associates, Advocate for the Petitioners and of Ms.K.Kirthana, Advocate for the Respondents and upon perusing the records and having stood over for consideration till this day this Court delivered the following :

ORDER

Petition filed by the petitioner under Order 39 rule 1 and 2 and section 151 of CPC to pass an order of Temporary injunction restraining the respondents, their legal representatives, servants, assignees, men and agents from in any manner interfering or encumbering the petition mentioned properties pending disposal of the suit and also grant an order of Ad-Interim Injunction to the same effect pending disposal of this petition.

1. The brief averments of the affidavit filed by the Petitioners as follows:- 1.1.

1.1. The 2nd to 4th petitioners having business and production in cotton yarn waste and running a partnership firm in the name and style of M/s.R.S.Sales Corporation, the 1st petitioner/plaintiff having its registered office at Door No.14, S.N.Temple Road, Salkia, Howrah – 711106 and its branch office at Site No.261/2A, Chettipalayam Road, Pappampatti, Coimbatore. The petitioners are manufacturing and purchase of raw materials of Cotton yarn waste and cotton rags from local parties at Coimbatore and process the above said raw materials in the breaking machines for production which is situated at the above said address at Coimbatore.

1.2. The property more fully mentioned as 'A' schedule admeasuring 2 acres of dry vacant land with the specified boundaries in S.F.No.261/2A Pappampatti village, Sulur taluk was purchased in the name of 1st plaintiff firm by virtue of a sale deed dated 06.01.1996 registered as doc.No.69/1996 from the 6th defendant for valuable consideration. Similarly the 'B' schedule property admeasuring 2 acres of dry vacant land in the same survey field with the specified boundaries was purchased from the 6th defendant in the name of 1st plaintiff firm by virtue of a sale deed dated 28.02.1996 registered as doc.No.1038/1996 for valuable consideration.

1.3. From the date of purchase the partners of the firm are in absolute possession and enjoyment of the suit properties. They covered the entire Southern boundary of 4 acres facing the Chettipalayam Main Road with 12 feet brick compound was with gates which extended to certain length of East and Western boundaries also as shown in the rough plan. The remaining boundaries were covered with stone boundaries.

1.4. Initially, the entire business of the firm at Coimbatore was looked after by the previous partners from Coimbatore and some of the other partners were doing business at Howrah, West Bengal. They had put up more than 15 super structures viz., Factories with huge Machineries embedded on earth, Engine and Boiler house, Servant quarter, Power stations, Godowns for cotton Storage, Office rooms etc., by

investing huge amounts in the suit property. The electricity connections were taken in the firm's name and are in exclusive and peaceful possession of the suit properties till date.

1.5. In July 2018, the partner who was looking after the business viz., Mr.Maheshkumar was suffering from severe illness and he let out the suit properties on lease to two various persons viz., M/s.Dhanvi Enterprise and M/s.Emro Arts Private Limited., In 2019-2020, the said partner Mahesh Kumar Kedia started to construct another Godown at the extreme North West corner of the suit properties. He had laid foundation and 3 feet wall upon it with black Granite stones and started construction at all four sides. Later he could not proceed with the construction due to his deteriorated health conditions. The lessees continued their business till March2020 and during the Covid pandemic, the lessees have incurred heavy loss and unable to continue their business in the suit properties and they were constrained to close down their business from July 2022.

1.6. In the meanwhile, on 01.05.2021, the partner Mr.Maheshkumar died intestate leaving behind his mother Smt.Savitri Devi Kedia, the 2nd plaintiff as his only legal heir to inherit his properties. After the death of Mr.Maheshkumar, remaining partners of the firm reconstituted the firm on 01.06.2021 and inducted Smt.Savitri Devi Kedia as incoming partner of the partnership firm. As all the petitioners are women and residing at Howrah, West Bengal, the suit properties were managed by their Manager Mr.Ravikumar and the Power agent Mr.Dhanraj Kedia.

1.7. Taking advantage of the absence of the partners of the firm, all of a sudden on 07.06.2023 at about 3.pm, the 2nd and 5th respondents illegally entered in to the South West corner of suit properties with their henchmen along with JCB and unlawfully demolished the 3 feet granite wall put up for new godown. The portion of construction demolished by the respondents has been shown in red colour in the rough sketch attached with the plaint. The petitioners was present in the suit properties and immediately opposed the 2nd and 5th respondents and their henchmen

from further demolishing the said construction. Their illegal attempt was thwarted by petitioner with the help of the security men, workers of adjacent tenants. The 2nd and 5th respondents have threatened petitioner that they are holding the portion of the suit properties and unlawfully trying to dispose the petitioners.

1.8. On 14.06.2023, the petitioners have given a written complaint before the Sulur Police Station against the respondents for threats, criminal trespass and causing damage to the suit property. Again on 20.06.2023, the 2nd and 5th respondents visited the suit properties with their men and created a scene and tried to interfere in the suit properties and threatened the workers with dire consequences. At any point time, the respondents may interfere in petitioners peaceful possession and enjoyment of the suit properties.

1.9. Hence, the petitioners approach this Hon'ble court for obtaining appropriate reliefs for permanent injunction restraining the respondent, their minor agent from in any manner in trespassing the suit property and further creating any fictitious transfer deeds of the suit properties to third parties. Hence, the petition.

2. The counter statement filed by the 6th respondent as follows:

2.1. The application is false, frivolous, vexatious and unsustainable, both in law and on facts of the case. The 6th defendant's mother Valliammal purchased 14.67 acres from one Balakrishnammal on 11.09.1949. Further she executed a WILL in respect of 14.17 acres in favour of 6th defendant on 23.10.1969. During the life time the Valliammal, herself had settled 50 cents to her own sister out of 14.17 acres the plaintiff had purchased 6 acres under three different sale deeds date 06.01.1996, 28.02.1996 and 28.06.1996.

2.2. Further in the year 2019, the 6th defendant came to the suit property to visit and came to know that the plaintiffs has encroached an another one acre in addition with their purchased 6 acres. Further they stated that, if the construction in the encroached portion to be removed, it will be great loss to the plaintiffs and further they will measure and allot one acre on Southern side of their purchased

land. This defendants also accepted the terms. Further the Suresh Kumar died due to Corona and the defendants put in dark as to how to approach the other plaintiffs and put to end regarding one acre. Further the plaintiffs are discharged their Industry wastage in the defendants' property. Further the 6th defendant has executed settlement deed in favour of his legal heirs. The plaintiffs alone encroached one acre of the defendants' by discharging the wastage of the plaintiffs' company. Further this defendants has not encroached plaintiffs property instead of the plaintiffs alone encroached one acre of this 6th defendant's land and this defendant tried to clean the wastages discharged by the plaintiffs in the defendants property. This defendants will not make any disturbance to the plaintiffs' peaceful enjoyment. The plaintiffs filed the suit by suppressing many material facts. Hence, this ought to be dismissed.

3. Point for Consideration:-

Whether the petition under Order 39 rule 1 and 2 and section 151 of CPC is to be allowed?

4. Points:-

4.1. Heard both side. Perused records. Both side admitted fact that the 6th defendant is originally the absolute owner of the entire suit property to the larger extent of 14.17 acres and the 1st plaintiff firm purchased 6 acres of land through the sale deeds dated 06.01.1996, 28.02.1996, 28.10.1996. Further, the remaining extent of 8.17 acres now in the hands of defendants and the plaintiffs as running a industry business in the suit property.

4.2. The plaintiffs filed this suit stating that the defendant's with JCB demolished South Western corner 3 feet granite wall of the suit property and the petitioner preferred complaint the police officials without made enquiry had directed the plaintiffs to civil court. Hence, this suit.

4.3. The defendants case is after sale of 6 acres to plaintiffs, the defendants had remaining property in the suit survey number, and the plaintiffs have encroached another one acre on Southern side by discharging the wastage of the factory in defendant's land. Hence, the defendants taken action to remove the wastage from

the defendants' land with the JCB.

4.4. This being the facts, whether the plaintiffs has alone in possession of their 6 acres according to their documents or they have encroached an another one acre of defendant's land on Southern side as alleged by the defendants is the matter to be decided on merits in the suit. Hence, there is an identification of property dispute in the suit property and to resolve the same an Advocate Commissioner is appointed today in another IA.No.5/23. Hence, the subject matter to be decided on merits, after examining both side oral and documentary evidence and the said prayer asked temporarily in this application. Hence, without deciding the facts on merits the possession can not be decided.

In the result, this petition is dismissed. No cost.

Dictated to the Steno-typist and directly typed by her in computer, and corrected and pronounced by me in open court this the 19th day of October 2023.

District Munsif,
Sulur.

List of witnesses and documents on petitioners side:

Nil

List of witnesses and documents on Respondents side:-

Nil

District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.4/2023 in
O.S.No.67/2023
Dated :19.10.2023
DMC, Sulur.